U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th Street, Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue date: 15Mar2002

Case No: 2001-BLA-0869

In the Matter of

JOHNNY I. TURNER,
Claimant

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Respondent.

APPEARANCES:

Joseph E. Wolfe, Esquire
For the claimant

Anne T. Knauff, Esquire
For the Director

BEFORE: JOSEPH E. KANE
Administrative Law Judge

DECISION AND ORDER – AWARDING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). Benefits are awarded to coal miners who are totally disabled due to pneumoconiosis. Surviving dependents of coal miners whose deaths were caused by pneumoconiosis may also recover benefits. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201(a) (2001).

On June 7, 2001, this case was referred to the Office of Administrative Law Judges for a formal hearing. Following proper notice to all parties, a hearing was scheduled on January 30, 2002, in Harlan, Kentucky, but, by joint motion, both parties moved for a decision on the record. The motion was granted. The Director's exhibits were admitted into evidence pursuant to 20 C.F.R. § 725.456, and the parties had full opportunity to submit additional evidence.

The Findings of Fact and Conclusions of Law that follow are based upon my analysis of the entire record, arguments of the parties, and the applicable regulations, statutes, and case law. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformance with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in this decision exclusively pertain to that title. References to DX and CX refer to the exhibits of the Director and claimant, respectively. The transcript of the hearing is cited as "Tr." and by page number.

ISSUES

The following issues remain for resolution:

1. whether the evidence establishes a material change in conditions within the meaning of Section 725.309(d); and, if so,

2. the length of the miner's coal mine employment;

3. whether the miner has pneumoconiosis as defined by the Act and regulations;

4. whether the miner's pneumoconiosis arose out of coal mine employment;

5. whether the miner is totally disabled;

6. whether the miner’s disability is due to pneumoconiosis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Background and Procedural History

The claimant, Johnny I. Turner, was born on April 2, 1928. Mr. Turner married Ethel Eldridge on June 10, 1945, and they reside together. (DX 16). They had no children who were under eighteen or dependent upon them at this time this claim was filed. (DX 1).

Claimant complains of sputum production, wheezing, constant exhaustion upon limited exertion, cough, chest pain, and difficulty sleeping. He has difficult walking more than a limited distance and exhausts himself walking even one flight of stairs. The claimant does not currently smoke, and the vast majority of medical evidence in the record maintains that the claimant has never smoked.[1]

Mr. Turner filed his application for black lung benefits on January 5, 2001. (DX 1). The Office of Workers' Compensation Programs denied the claim on April 23, 2001. (DX 12). Pursuant to claimant's request for a formal hearing, (DX 13), the case was transferred to the Office of Administrative Law Judges. (DX 20).

The claimant previously filed four different claims, the most recent of which was filed on October 16, 1997. (DX 16-19). Each claim was denied and is now administratively closed. (DX 21). The most recent denial was issued on February 25, 1998. (DX 19).

Coal Mine Employment

The duration of a miner's coal mine employment is relevant to the applicability of various statutory and regulatory presumptions. Claimant bears the burden of proof in establishing the length of his coal mine work. *See Shelesky v. Director, OWCP*, 7 BLR 1-34, 1-36 (1984); *Rennie v. U.S. Steel Corp.*, 1 BLR 1-859, 1-862 (1978). On

---

[1]Only Dr. Dahhan's February 1975 opinion includes a smoking history for the claimant. (DX 16). Dr. Dahhan reported that Mr. Turner smoked one-half pack per day. The remaining medical evidence advances either that the claimant does not smoke or that he never smoked.

his application for benefits, Mr. Turner alleges thirty-six years of coal mine employment. (DX 1). The evidence in the record includes a Social Security Statement of Earnings encompassing the years 1944 to 1978, employment history forms, applications for benefits, and pay stubs. (DX 1-5).

The Act fails to provide specific guidelines for computing the length of a miner's coal mine work. However, the Benefits Review Board consistently has held that a reasonable method of computation, supported by substantial evidence, is sufficient to sustain a finding concerning the length of coal mine employment. *See Croucher v. Director, OWCP*, 20 BLR 1-67, 1-72 (1996) (en banc)*; Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, 1-60 (1988); *Niccoli v. Director, OWCP*, 6 BLR 1-910, 1-912 (1984). Thus, a finding concerning the length of coal mine employment may be based on many different factors, and one particular type of evidence need not be credited over another type of evidence. *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-9 (1985).

Based upon my review of the record, I place the greatest weight on the Social Security records because they are documented, independent evidence of the miner's coal mine employment. Using these records, I credit Mr. Turner with coal mine work for each quarter year in which he earned fifty dollars or more as a coal miner. *See Croucher*, 20 BLR at 1-74; *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984); 20 C.F.R. § 404.140(b). The Social Security record reveals thirty-eight quarters of coal mine employment.[2] Accordingly, I credit the claimant with 9.5 years of coal mine employment.

Medical Evidence

---

[2]The qualifying quarters are third and fourth quarters of 1947; first, second, and fourth quarters of 1948; second quarter of 1950; the second, third, and fourth quarters of 1951; all four quarters of 1952, all four quarters of 1953; all four quarters of 1954; all four quarters of 1955; all four quarters of 1956, the third and fourth quarters of 1957; the first and fourth quarters of 1959; the first quarter of 1960; the second and fourth quarters of 1961; and the first and second quarters of 1962.

A. X-ray reports[3]

Exhibit	Date of X-ray	Date of Reading	Physician/ Qualifications	Interpretation
DX 8	01/16/01	01/16/01	Forehand/B[4]	1/0 pneumoconiosis
DX 11	01/16/01	02/28/01	Barrett/B/BCR[5]	Negative.

[3]A chest x-ray may indicate the presence or absence of pneumoconiosis as well as its etiology. It is not utilized to determine whether the miner is totally disabled, unless complicated pneumoconiosis is indicated wherein the miner may be presumed to be totally disabled due to the disease.

[4]A "B" reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by
or on behalf of the Department of Health and Human Services. *See* 42 C.F.R. § 37.51(b)(2). Interpretations by a physician who is a "B" reader and is certified by the American Board of Radi- ology may be given greater evidentiary weight than an interpretation by any other reader. *See Woodward v. Director, OWCP*, 991 F.2d 314, 316 n.4 (6th Cir. 1993); *Herald v. Director, OWCP*, BRB No. 94-2354 BLA (Mar. 23, 1995)(unpublished). When evaluating interpretations of miners' chest x-rays, an administrative law judge may assign greater evidentiary weight to readings of physicians with superior qualifications. 20 C.F.R. § 718.202 (a)(1); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211, 1-213 (1985). The Benefits Review Board and the United States Court of Appeals for the Sixth Circuit have approved attributing more weight to interpretations of "B" readers because of their expertise in x-ray classification. *See Warmus v. Pittsburgh & Midway Coal Mining Co.*, 839 F.2d 257, 261 n.4 (6th Cir. 1988); *Meadows v. Westmoreland Coal Co.*, 6 BLR 1-773, 1-776 (1984). The Board has held that it is also proper to credit the interpretation of a dually qualified physician over the interpretation of a B-reader. *Cranor v. Peabody Coal Co.*, 22 B.L.R. 1-1 (1999) (en banc on recon.); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). *See also Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985) (weighing evidence under Part 718).

[5]Board-certified radiologist

Exhibit	Date of X-ray	Date of Reading	Physician/ Qualifications	Interpretation
DX 10	01/16/01	02/28/01	Sargent/B/BCR	Negative.
DX 19	01/06/98	01/16/98	Sargent/B/BCR	Negative.
DX 19	01/16/98	01/30/98	Barrett/B/BCR	Negative.
DX 19	01/06/98	01/06/98	Baker/B	1/1 pneumoconiosis
DX 18	03/19/96	04/05/96	Sargent/B/BCR	Negative.
DX 18	03/19/96	03/19/96	Wicker/B	Negative.
DX 18	01/17/96	01/17/96	Tiu	Underlying changes of COPD.
DX 18	11/16/95	11/16/95	Tiu	No active disease except for osteoporosis.
DX 18	04/12/95	04/12/95	Tiu	No active disease except for underlying changes of COPD.
DX 17	04/02/92	04/19/92	Sargent/B/BCR	Negative
DX 17	04/02/92	04/02/92	Dahhan	0/1 pneumoconiosis
DX 16	09/17/76	09/17/76	Domm	1/1 pneumoconiosis
DX 16	02/17/75	02/17/75	Wells/BCR	½ pneumoconiosis
DX 16	02/17/76	05/04/75	Undeterminable	1/1 pneumoconiosis

B. Pulmonary Function Studies[6]

[6] The pulmonary function study, also referred to as a ventilatory study or spirometry, measures obstruction in the airways of the lungs. The greater the resistance to the flow of air, the more severe any lung impairment. A pulmonary function study does not indicate the existence of pneumoconiosis; rather, it is employed to measure the level of the miner's disability. The regulations require that this study be conducted three times to assess whether the miner exerted optimal effort among trials, but the Board has held that a ventilatory study which is accompanied by only two tracings is in "substantial compliance" with the quality standards at § 718.204(c)(1). *Defore v. Alabama By-Products Corp.*, 12 B.L.R. 1-27 (1988). The values from the FEV1 as well as the MVV or FVC must be in the record, and the highest values from the trials are used to determine the level of the miner's disability.

Exhibit Date	Physician	Age/ Height	FEV_1	FVC	MVV	FEV_1/ FVC	Tracings	Comments
DX 8 01/16/01	Forehand	73 69'	2.23 2.11*	3.13 2.97*	42 45*	0.71 0.71*	Yes Yes	Obstructive ventilatory pattern
DX 18 03/19/96	Wicker	67 69.75'	n/a	n/a	n/a	n/a	n/a	PFT not performed at miner's request
DX 16 09/17/76	Domm	56** 70	2.0	2.4	28.8		Yes	Good cooperation with apprehension. Good comprehension. Obstructive ventilatory insufficiency.
DX 16 08/03/76	O'Neill	56** 69.5'	2.70	3.33		0.81	Yes	Results probably normal when one takes into account some poor effort.
DX 16 04/20/76	Dahhan	47** 71'	2.7	3.3	63	0.82	Yes	
DX 16 02/17/75	Dahhan	54** 69.75	2.9	3.9	60	0.74	Yes	Poor cooperation. Good comprehension.

*denotes testing after administration of bronchodilator
** This reported age is in error. The claimant was born on April 2, 1928.

C. Arterial Blood Gas Studies[7]

[7]A blood gas study is designed to measure the ability of the lung to oxygenate blood. The initial indication of a miner's impairment will most likely manifest itself in the clogging of alveoli, as opposed to airway passages, thus rendering the blood gas study a valuable tool in the assessment of disability.

Exhibit	Date	Physician	pCO_2	pO_2	Resting/ Exercise	Comments
DX 8	01/16/01	Forehand	32	56	Resting	Exercise ABG could not be performed due to heart problems. Arterial hypoxemia
DX 18	03/19/96	Wicker	39.7	77.5	Resting	Declined exercise ABG. States he cannot walk up stairs due to his breathing problem.
DX 17	04/02/92	Dahhan	27.5	85.4	Resting	
DX 16	08/02/76	O'Neill	40	84		
DX 16	04/20/76	Dahhan	34	73	Resting	

D. Narrative Medical Evidence

On January 16, 2001, Dr. J. Randolph Forehand examined the claimant and submitted the claimant to an electrocardiogram, pulmonary function test, arterial blood gas study, and chest x-ray. (DX 8). The doctor recorded that the claimant had thirty-six years of coal mine employment, but detailed only approximately twenty-five years. Dr. Forehand noted that the claimant complained of daily sputum production, a twenty-year history of dyspnea, constant chest pain, orthopnea, and cough. The doctor recorded that the claimant never smoked. Dr. Forehand diagnosed the claimant with coal workers' pneumoconiosis based upon the claimant's history, chest x-ray, and arterial blood gas results. He also diagnosed intermittent ventricular tachycardia. The etiology of the pulmonary impairment was "coal dust exposure [,] arterial hypoxemia." The doctor also opined that the claimant was totally disabled and that coal workers' pneumoconiosis was the sole factor contributing to the impairment. Dr. Forehand stated, "Mr. Turner's job as a coal loader requires a degree of physical activity that exceeds the level of work that he can attain, based on his ventilatory capacity and oxygen carrying capacity."

On January 6, 1998, Dr. Glen Baker examined the claimant. (DX 19). He recorded a twenty-five year coal mine employment history, noting that the claimant alleged thirty-five years of underground coal mine employment. The claimant complained of

long histories of sputum production, wheezing, dyspnea over 100 yards, cough, chest pain, and orthopnea. The doctor submitted the patient to a chest x-ray, pulmonary function test, and arterial blood gas study. The doctor opined that the claimant suffered from coal workers' pneumoconiosis based upon Claimant's chest x-ray and significant duration of exposure. He also opined that the claimant suffered from a chronic obstructive pulmonary disease, based upon the pulmonary function test results, and chronic bronchitis, based upon the claimant's history of cough, sputum production, and wheezing. Dr. Baker concluded that Mr. Turner was moderately impaired, due solely to his coal dust exposure. The doctor opined that the claimant did not possess the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment.

In an undated opinion, Dr. R. Sundaram diagnosed the claimant with pneumoconiosis and opined that he was totally disabled. (DX 19). The opinion evinces that a chest x-ray was taken and a pulmonary function test performed. The doctor stated:

> Mr. John Turner has prolonged exposure to coal dust and has been a non-smoker, has significant functional limitations, as mentioned above. His clinical examination laboratory data and pulmonary function test is supportive of pneumoconiosis. He is unable to return to his former coal mining employment. He is unable to bend, crawl, stoop or work at unprotected heights or extremes of temperature. He has no other vocational skills or training and as such is disabled.

Id.

On March 19, 1996, Dr. Mitchell Wicker examined the claimant, submitting him to a chest x-ray, arterial blood gas, and an electrocardiogram. (DX 18). Claimant refused to participate in a pulmonary function test. The doctor failed to record a coal mine employment history, noting that the claimant said he worked for Cumberland Coal Company, but did not

remember the dates of his employment. The claimant complained of sputum production, wheezing, constant dyspnea, cough, occasional hemoptysis, ankle edema, chest pain, and orthopnea. The doctor concluded that no evidence of pneumoconiosis existed, and he was unable to determine impairment because the claimant declined the pulmonary function test.

On November 17, 1995, Dr. Anthony F. Ledger examined the claimant upon his admission to the emergency room. (DX 18). The claimant was found passed out on the emergency room floor. The doctor's opinion included review of a chest x-ray and arterial blood gas. The doctor diagnosed 1) questionable seizure disorder; 2) chronic obstructive pulmonary disorder; and 3) thrombophlebitis.

Dr. Mahammad Amin, a neurologist, examined the claimant on November 20, 1995. (DX 18). He diagnosed a possible seizure disorder and possible enlargement of the pituitary area. The doctor opined that he needed to rule out the possibility of a syncope attack due to cardiac and pulmonary dysfunction.

On April 2, 1992, Dr. A. Dahhan examined the claimant for the second time, submitting him to a chest x-ray and arterial blood gas. (DX 17). The claimant declined to take a pulmonary function test. The doctor recorded that the claimant never smoked and attached a coal mine history form to his report. The claimant complained of sputum production, wheezing, dyspnea, cough,
chest pain, orthopnea, and ankle edema. The doctor diagnosed chronic bronchitis and hypertension. He concluded that he could make no assessment of impairment without spirometry.

On September 17, 1976, Dr. Sheldon Modd examined the claimant. (DX 16). The claimant complained of cough, sputum production, and trouble breathing. The doctor diagnosed coal workers' pneumoconiosis, simple 2/2 and an obstructive ventilatory insufficiency. The doctor believed that the claimant's diagnosed condition was related to the patient's coal dust exposure. Dr. Modd ranked the severity of the claimant's impairment as "Severe. Complete."

Dr. Richard O'Neill examined the claimant on August 2, 1976. (DX 16). Dr. O'Neill took a chest x-ray, arterial blood gas, and pulmonary function test from the claimant. At the time of the examination, the claimant was complaining of dyspnea upon walking 50 yards or climbing one flight of

stairs, orthopnea, paroxysmal nocturnal dyspnea, chronic cough, ankle edema, and chest pain. The claimant alleged thirty-five years of coal mine employment as a loader and general laborer. The doctor recorded that the claimant does not smoke. Upon review of the medical tests and his physical examination, the doctor diagnosed 1) chronic bronchitis and 2) coal workers' pneumoconiosis, simple, stage 1/1 (p and q).

Dr. Philip Begley issued a medical opinion on April 27, 1976, in which he diagnosed pneumoconiosis and opinion that the claimant was totally disabled. (DX 16). The doctor examined the claimant the previous week, and he recorded a coal mine employment history of thirty-five years. The claimant was complaining of shortness of breath and chest pain. During the examination, the claimant underwent a chest x-ray, arterial blood gas, and pulmonary function test. Dr. Begley based his diagnoses of pneumoconiosis and total disability on the claimant's x-ray, pulmonary function test, and physical examination.

The claimant submitted to a chest x-ray, pulmonary function test, and physical examination on February 17, 1975 by Dr. A. Dahhan. (DX 16). The doctor recorded thirty-five years of coal mine employment for the claimant and noted that the claimant was a smoker, smoking one-half pack per day. Dr. Dahhan reported that the claimant had a history of daily cough, sputum production, occasional wheezing, and dyspnea on exertion. The claimant also experience sporadic chest pain and occasional edema. Considering the medical objective findings, the doctor diagnosed 1) simple occupational pneumoconiosis, chronic bronchitis, and possible early heart failure.

E. Other Medical Evidence

On April 3, 1995, Dr. Gregory Tiu performed a CT scan of the claimant's head. (DX 18). His impressions were "[n]ormal non-enhanced CT scan of the head."

On April 12, 1995, an MRI of the claimant's brain was performed by Dr. Tiu. (DX 18). The doctor interpreted the findings as 1) mild to moderate degree of diffuse brain atrophy identified; 2) presence of a rounded and mildly enlarged pituitary measuring 1 cm is seen – the possibility of a pituitary adenoma is raised; and 3) rest of study is unremarkable.

On November 16, 1995, Dr. Tiu again issued a radiology report after a CT scan of the claimant's head. (DX 18). The doctor concluded that there were no signs of acute intracranial hemorrhage, but he identified bifrontal lobe atrophy.

DISCUSSION AND APPLICABLE LAW

Because Mr. Turner filed his application for benefits after March 31, 1980, this claim shall be adjudicated under the regulations at 20 C.F.R. Part 718. Under this part of the regulations, claimant must establish by a preponderance of the evidence that he has pneumoconiosis, that his pneumoconiosis arose from coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. Failure to establish any of these elements precludes entitlement to benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). Furthermore, because the instant claim was brought more than one year after a previous denial, the claimant must establish a material change in condition before his claim can be considered on the merits. To establish a material change in condition, claimant must establish one of the following elements with newly-submitted evidence: (1) the existence of pneumoconiosis; (2) pneumoconiosis arising from coal mine employment; (3) total disability; or (4) total disability due to pneumoconiosis.

Refiled Claim

In cases where a claimant files more than one claim and a prior claim has been finally denied, later claims must be denied on the grounds of the prior denial unless the evidence demonstrates "a material change in condition." 20 C.F.R. § 725.309 (d). The United States circuit courts of appeals have developed divergent standards to determine whether "a material change in conditions" has occurred. Because Mr. Turner last worked as a coal miner in the state of Kentucky, the law as interpreted by the United States Court of Appeals for the Sixth Circuit applies to this claim. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989).

The Sixth Circuit has adopted the Director's position for establishing a material change in conditions. Under this approach, an administrative law judge must consider all of the new evidence, both favorable and unfavorable, to determine

whether the miner has proven at least one of the elements of entitlement that previously was adjudicated against him. If a claimant establishes the existence of one of these elements, he will have demonstrated a material change in condition as a matter of law. Then, the administrative law judge must consider whether all the evidence of record, including evidence submitted with the prior claims, supports a finding of entitlement to benefits. *Sharondale Corp. v. Ross*, 42 F.3d 993, 997-98 (6th Cir. 1994). *See Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358, 1363 (4th Cir. 1996).

Applying the *Ross* standard, I must review the evidence submitted subsequent to February 25, 1998, the date of the prior final denial, to determine whether claimant has proven at least one of the elements that was decided against him. The following elements were decided against Mr. Turner in the prior denial: (1) the existence of pneumoconiosis; (2) pneumoconiosis arising from coal mine employment; (3) total disability; and (4) total disability due to pneumoconiosis. If the claimant establishes any of these elements with new evidence, he will have demonstrated a material change in condition. Then, I must review the entire record to determine entitlement to benefits.

The evidence submitted subsequent to the previous denial establishes a material change in conditions. The newly-submitted evidence consists of three interpretations of one chest x-ray, one pulmonary function test, one arterial blood gas, and one narrative opinion.

The chest x-rays alone do not demonstrate the presence of pneumoconiosis. Of the three interpretations of the January 16, 2001 x-ray, two were interpreted as negative by dually-qualified physicians, while one interpretation found pneumoconiosis by a “B” reader. Because the negative readings constitute the majority of interpretations and are verified by more, highly-qualified physicians, I find that the x-ray evidence found in the recently-submitted evidence is negative for pneumoconiosis. *Herald v. Director, OWCP*, BRB No. 94-2354 BLA (Mar. 23, 1995) (unpublished); *Edmiston v. F & R Coal Co.*, 14 B.L.R. 1-65 (1990).

The lone narrative medical opinion, however, establishes a material change in conditions. (DX 8). The opinion, by Dr. Forehand, is well reasoned and well documented. Accordingly, I

grant it probative weight in demonstrating the current physical condition of the claimant. *See Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19 (1987). Dr. Forehand clearly diagnoses pneumoconiosis on the basis of the claimant's history, chest x-ray, and arterial blood gas results. As there is no contravening opinion, I find that Dr. Forehand's opinion establishes a material change in conditions.

The recently submitted evidence also demonstrates a material change in conditions regarding the claimant's level of impairment. Dr. Forehand's opinion diagnoses total disability, and I grant his opinion probative weight as it demonstrates an understanding of the exertional requirements of the claimant's job, the level of impairment the claimant suffers from, and the resultant deviation of the claimant's residual functional capacity from those requirements. Furthermore, the arterial blood gas study of record in the newly-submitted evidence produced qualifying values. (DX 8). When I combine Dr. Forehand's opinion and the qualifying blood gas study with the non-qualifying pulmonary function study, I find that the weight of the evidence demonstrates total disability. (DX 8). Thus, the claimant has also demonstrated a material change in conditions regarding his impairment level.

As Claimant has demonstrated a material change in conditions, I now must review the record *de novo* to determine if Mr. Turner is entitled to benefits.

Pneumoconiosis and Causation

Under the Act, "'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." 30 U.S.C. § 902(b). Section 718.202(a) provides four methods for determining the existence of pneumoconiosis. Each shall be addressed in turn.

Under Section 718.202(a)(1), a finding of pneumoconiosis may be based upon x-ray evidence. The record contains sixteen interpretations of ten chest x-rays. Of these interpretations, seven were negative for pneumoconiosis, six were positive for pneumoconiosis, and three were silent as to the presence of the disease.

Of the ten doctors interpreting Claimant's x-rays, five doctors – Drs. Forehand, Barrett, Sargent, Baker, and Wicker – were "B" readers. Three doctors – Drs. Barrett, Sargent, and Wells – were board-certified radiologists. Only two doctors – Drs. Barrett and Sargent – were dually-qualified. Of the "B" readers' nine interpretations, two were positive for pneumoconiosis and seven were negative for pneumoconiosis. Of the board-certified radiologists' seven interpretations, one was positive for pneumoconiosis and six were negative for pneumoconiosis. The dually-qualified physicians' six interpretations were all negative for pneumoconiosis.

I may assign heightened weight to the interpretations by physicians with superior radiological qualifications. *See McMath v. Director, OWCP,* 12 BLR 1-6 (1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc). And, because the negative readings constitute the majority of interpretations and are verified by more, highly-qualified physicians, I find that the x-ray evidence is negative for pneumoconiosis.

Under Section 718.202(a)(2), a claimant may establish pneumoconiosis through biopsy or autopsy evidence. This section is inapplicable herein because the record contains no such evidence.

Under Section 718.202(a)(3), a claimant may prove the existence of pneumoconiosis if one of the presumptions at Sections 718.304 to 718.306 applies. Section 718.304 requires x-ray, biopsy, or equivalent evidence of complicated pneumoconiosis. Because the record contains no such evidence, this presumption is unavailable. The presumptions at Sections 718.305 and
718.306 are inapplicable because they only apply to claims that were filed before January 1, 1982, and June 30, 1982, respectively. Because none of the above presumptions applies to this claim, claimant has not established pneumoconiosis pursuant to Section 718.202(a)(3).

Section 718.202(a)(4) provides the fourth and final way for a claimant to prove that he has pneumoconiosis. Under Section 718.202(a)(4), a claimant may establish the existence of the disease if a physician exercising reasoned medical judgment, notwithstanding a negative x-ray, finds that he suffers from pneumoconiosis. Although the x-ray evidence is negative for pneumoconiosis, a physician's reasoned opinion

may support the presence of the disease if it is supported by adequate rationale besides a positive x-ray interpretation. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986). The weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director*, OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp*., 2 BLR 1-130 (1979). A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc).

The record contains five[8] medical opinions addressing the presence of pneumoconiosis. Four opinions diagnose pneumoconiosis while one opinion concludes that the disease is absent.

The most recent opinion of record is that of Dr. J. Randolph Forehand. Dr. Forehand unequivocally diagnoses pneumoconiosis on the basis of the claimant's history, chest

---

[8]I do not credit Dr. Glen Baker's January 6, 1998 report as a medical opinion addressing pneumoconiosis as his opinion clearly diagnoses the disease solely on the bases of Claimant's
chest x-ray and coal dust exposure. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569 (6th Cir. 2000). Likewise, I include neither Dr. Modd's opinion (DX 16) nor Dr. O'Neill's opinion (DX 16) because I find that both doctors based their diagnoses of pneumoconiosis solely on the claimant's x-ray interpretations. Furthermore, I do not include the opinions of Drs. Ledger (DX 18), Amin (DX 18), and Dahhan (DX 17) in this discussion as each is silent as to the presence or absence of pneumoconiosis.

x-ray, and arterial blood gas. I find Dr. Forehand's opinion is well reasoned and well documented. Furthermore, as the most recent opinion of record, it is the best reflection of the miner's current condition. Accordingly, based upon the opinion's recency, superior reasoning and documentation, I grant it substantial probative weight.

Dr. Sundaram opined that the claimant suffered from pneumoconiosis, but I accord the doctor's undated opinion less probative weight as the opinion is poorly documented. The opinion fails to provide the objective medical data upon which it relies to diagnose pneumoconiosis. *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19 (1987)(holding a "documented" opinion is one that sets forth the clinical findings, observations, facts, and other data upon which the physician based the diagnosis).

Dr. Wicker's opinion is well reasoned and well documented, and I grant it concomitant probative weight. The doctor's opinion clearly expressed the results of the objective medical tests performed by the physician, and Dr. Wicker's conclusion of no pneumoconiosis is consistent with those results. *See Fields, supra* (holding a "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions).

I find Dr. Begley's opinion well reasoned and well documented, and I grant it probative weight as to the existence of pneumoconiosis. The doctor's opinion provides the objective data and subjective observations upon which the doctor bases his judgment, and his conclusion follow reasonably from his premises.

Like Dr. Begley's opinion, Dr. Dahhan's February 22, 1975 opinion is well reasoned and well documented. Accordingly, I grant it probative weight as to the existence of pneumoconiosis.

After a review of all of the medical opinions addressing the presence or absence of pneumoconiosis, I find that the clear weight of the evidence supports a finding of pneumoconiosis. The weight I accord the opinions of Drs. Forehand, Sundaram, Begley, and Dahhan outweighs the probative value of Dr. Wicker's opinion. The claimant has demonstrated, by a

preponderance of the evidence, the presence of pneumoconiosis.

Once it is determined that the miner suffers (or suffered) from pneumoconiosis, it must be determined whether the miner's pneumoconiosis arose, at least in part, out of coal mine employment. 20 C.F.R. § 718.203(a).

If a miner suffers from pneumoconiosis and was employed less than ten years in the Nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship. 20 C.F.R. § 718.203(c). *See also Stark v. Director, OWCP*, 9 B.L.R. 1-36 (1986); *Hucker v. Consolidation Coal Co.*, 9 B.L.R. 1-137 (1986). Specifically, the burden of proof is met under § 718.203(c) when "competent evidence establish[es] that his pneumoconiosis is significantly related to or substantially aggravated by the dust exposure of his coal mine employment." *Shoup v. Director, OWCP*, 11 B.L.R. 1-110, 1-112 (1987). The Sixth and Eleventh Circuits apply a more relaxed standard to state that the miner need only establish that his pneumoconiosis arose "in part" from his coal mine employment. *See Stomps v. Director, OWCP*, 816 F.2d 1533, 10 B.L.R. 2-107 (11th Cir. 1987); *Southard v. Director, OWCP*, 732 F.2d 66, 6 B.L.R. 2-26 (6th Cir. 1984).

The record must contain *medical* evidence establishing the relationship between pneumoconiosis and coal mine employment. The Board has held that "the administrative law judge could not reasonably infer a relationship based merely upon claimant's employment history." *Baumgartner v. Director, OWCP*, 9 B.L.R. 1-65, 1-66 (1986). In another case the Board concluded that "the Judge's sole reliance on lay testimony to find § 718.203(c) satisfied . . . is erroneous." *Tucker v. Director, OWCP*, 10 B.L.R. 1-35, 1-39 (1987).

Of the five medical opinions addressing the presence or absence of pneumoconiosis, four diagnosed the claimant as suffering from the disease. Of those four doctors, each attributed the claimant's pneumoconiosis to his occupation in the coal mines. Dr. Sundaram's opinion stands as the only opinion diagnosing pneumoconiosis and its etiology to which I did not accord full probative weight.

Each of the three opinions receiving full probative weight and concluding that the claimant's pneumoconiosis arose "in part" because of his coal mine employment is based upon a credited coal mine employment history that is greater than I have attributed to Mr. Turner. Specifically, the opinions of Drs. Forehand, Begley, and Dahhan are premised on a coal mine employment history from twenty-five years to thirty-five years. I attributed the claimant with slightly under a decade of coal mine employment based upon the claimant's Social Security records. While medical opinions which are predicated upon an erroneous coal mine employment history may be given little weight with regard to etiology of the miner's disease, I nevertheless find that Claimant has demonstrated the necessary link between his pneumoconiosis and coal mine employment. In *Barnes v. Director, OWCP*, 19 B.L.R. 1-71 (1995), the Board reiterated that a judge may accord an opinion less weight based upon a discrepancy in the administrative law judge's finding of coal mine employment and that relied upon by the physician, but the Board also stated that "the administrative law judge should...consider whether the record contains any documentary or testimonial evidence to suggest that any causal factors other than coal dust exposure as a cause of claimant's pneumoconiosis."

Beyond a minor reference to a smoking history in the 1972 report of Dr. Dahhan, the record contains no such evidence. Indeed, even Dr. Dahhan attributed the claimant's pneumoconiosis at least in part to his occupation, despite the possible presence of a smoking history. No other doctor addressing this issue records a smoking history or provides an alternate etiology for Mr. Turner's pneumoconiosis. Accordingly, I find that Mr. Turner has established that his pneumoconiosis arose "in part" from his coal mine employment. *See Southard v. Director, OWCP*, 732 F.2d 66, 6 B.L.R. 2-26 (6th Cir. 1984).

In sum, the evidence establishes that Mr. Turner has pneumoconiosis and that his pneumoconiosis arose out of coal mine employment. In order to establish entitlement to benefits, however, the evidence also must establish that claimant is totally disabled due to pneumoconiosis.

Total Disability Due to Pneumoconiosis

A miner is considered totally disabled when his pulmonary or respiratory condition prevents him from performing his

usual coal mine work or comparable work. 20 C.F.R. § 718.204 (b)(1). Non-respiratory and non-pulmonary impairments have no bearing on a finding of total disability. *See Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Section 718.204(b)(2) provides several criteria for establishing total disability. Under this section, I must first evaluate the evidence under each subsection and then weigh all of the probative evidence together, both like and unlike evidence, to determine whether claimant has established total respiratory disability by a preponderance of the evidence. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Once it is demonstrated that the miner is unable to perform his or her usual coal mine work, a prima facie finding of total disability is made and the party opposing entitlement bears the burden of going forth with evidence to demonstrate that the miner is able to perform "comparable and gainful work" pursuant to § 718.204(c)(2). *Taylor v. Evans & Gambrel Co.*, 12 B.L.R. 1-83 (1988).

Under Sections 718.204(b)(2)(i) and (b)(2)(ii), total disability may be established with qualifying pulmonary function studies or arterial blood gas studies.[9]

In the pulmonary function studies of record, there is a discrepancy in the height attributed to the claimant. The fact-finder must resolve conflicting heights of the miner recorded on the ventilatory study reports in the claim. *Protopappas v. Director, OWCP*, 6 B.L.R. 1- 221 (1983). *See also Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109 (4th Cir. 1995). The mean height ascribed to the claimant is 69.8 inches, and the median height is 69.75 inches. Accordingly, I find that the claimant's height is 69.8 inches for purposes of evaluating his pulmonary function tests.

All ventilatory studies of record, both pre-bronchodilator and post-bronchodilator, must be weighed.

---

[9]A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendices B and C of Part 718. *See* 20 C.F.R. § 718.204(b)(2)(i) and (ii). A "non-qualifying" test produces results that exceed the table values.

Strako v. Ziegler Coal Co., 3 B.L.R. 1-136 (1981). To be qualifying, the FEV_1, as well as the MVV or FVC values, must equal or fall below the applicable table values. *Tischler v. Director, OWCP*, 6 B.L.R. 1-1086 (1984). I must determine the reliability of a study based upon its conformity to the applicable quality standards, *Robinette v. Director, OWCP*, 9 B.L.R. 1- 154 (1986), and must consider medical opinions of record regarding reliability of a particular study. *Casella v. Kaiser Steel Corp.*, 9 B.L.R. 1-131 (1986). In assessing the reliability of a study, I may accord greater weight to the opinion of a physician who reviewed the tracings. *Street v. Consolidation Coal Co.*, 7 B.L.R. 1-65 (1984). Because tracings are used to determine the reliability of a ventilatory study, a study which is not accompanied by three tracings may be discredited. *Estes v. Director, OWCP*, 7 B.L.R. 1-414 (1984). If a study is accompanied by three tracings, then I may presume that the study conforms unless the party challenging conformance submits a medical opinion in support thereof. *Inman v. Peabody Coal Co.*, 6 B.L.R. 1-1249 (1984). Also, little or no weight may be accorded to a ventilatory study where the miner exhibited "poor" cooperation or comprehension. *Houchin v. Old Ben Coal Co.*, 6 B.L.R. 1-1141 (1984); *Runco v. Director, OWCP*, 6 B.L.R. 1-945 (1984); *Justice v. Jewell Ridge Coal Co.*, 3 B.L.R. 1-547 (1981).

The September 17, 1976 pulmonary function test produced qualifying values. The study is accompanied by tracings, and beyond a mistake as to the reported age, the study conforms to the applicable quality standards.

All blood gas study evidence of record must be weighed. *Sturnick v. Consolidation Coal Co.*, 2 B.L.R. 1-972 (1980). This includes testing conducted before and after exercise. *Coen v. Director, OWCP*, 7 B.L.R. 1-30 (1984); *Lesser v. C.F. & I. Steel Corp.*, 3 B.L.R. 1-63 (1981). In order to render a blood gas study unreliable, the party must submit a medical opinion that a condition suffered by the miner, or circumstances surrounding the testing, affected the results of the study and, therefore, rendered it unreliable. *Vivian v. Director, OWCP*, 7 B.L.R. 1-360 (1984) (miner suffered from several blood diseases); *Cardwell v. Circle B Coal Co.*, 6 B.L.R. 1-788 (1984) (miner was intoxicated). Similarly, in *Big Horn Coal Co. v. Director, OWCP [Alley]*, 897 F.2d 1045 (10th Cir. 1990) and *Twin Pines Coal Co. v. U.S. DOL*, 854 F.2d 1212

(10th Cir. 1988), the court held that the administrative law judge must consider a physician's report which addresses the reliability and probative value of testing wherein he or she attributes qualifying results to non- respiratory factors such as age, altitude, or obesity.

The January 16, 2001 arterial blood gas performed by Dr. Forehand produced qualifying values. Furthermore, the blood gas conforms to the quality standards in 20 C.F.R. §718.105(c).

Section 718.204(b)(2)(iii) provides that a claimant may prove total disability through evidence establishing cor pulmonale with right-sided congestive heart failure. This section is inapplicable to this claim because the record contains no such evidence.

Where a claimant cannot establish total disability under subparagraphs (b)(2)(i), (ii), or (iii), Section 718.204(b)(2)(iv) provides another means to prove total disability. Under this section, total disability may be established if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a respiratory or pulmonary impairment prevents the miner from engaging in his usual coal mine work or comparable and gainful work.

The weight given to each medical opinion will be in proportion to its documented and well-reasoned conclusions. A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient's history. *See Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director*, OWCP, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp.*, 2 BLR 1-130 (1979). A "reasoned" opinion is one in which the underlying documentation and data are adequate to support the physician's conclusions. *See Fields, supra*. The determination that a medical opinion is "reasoned" and "documented" is for this Court to determine. *See Clark v. Karst-Robbins Coal Co.*, 12 B.L.R. 1-149 (1989)(en banc).

In assessing total disability under § 718.204(c)(4), the administrative law judge, as the fact-finder, is required to compare the exertional requirements of the claimant's usual coal mine employment with a physician's assessment of the claimant's respiratory impairment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569 (6th Cir. 2000) (a finding of total disability may be made by a physician who compares the exertional requirements of the miner's usual coal mine employment against his physical limitations). Once it is demonstrated that the miner is unable to perform his or her usual coal mine work, a prima facie finding of total disability is made and the party opposing entitlement bears the burden of going forth with evidence to demonstrate that the miner is able to perform "comparable and gainful work" pursuant to § 718.204(c)(2). *Taylor v. Evans & Gambrel Co.*, 12 B.L.R. 1-83 (1988).

Five opinions of record addressed the claimant's level of impairment. The opinions of Drs. Forehand, Baker, Sundaram, Modd, and Begley will be discussed individually.[10]

Dr. Forehand's opinion is well reasoned and well documented. I accord his opinion of total disability probative weight as his opinion clearly demonstrates an understanding of the physical requirements of the claimant's coal mine employment, the limitations caused by his physical impairments, and the relationship between those two factors.

Likewise, the opinions of Drs. Baker, Domm, and Sundaram are well reasoned and well documented concerning their discussion of Claimant's impairment level. I accord substantial probative value to their diagnoses of total disability. While the opinions of Drs. Domm and Sundaram do not make explicit findings as to the exertional requirements of the claimant's coal mine employment, their respective diagnoses of *total* disability obviate the need for such findings as the doctors would have concluded that the claimant was disabled from *any* exertion.

---

[10] I do not discuss the opinions of Drs. Ledger, Amin, O'Neill, Wicker, or Dahhan as their opinions were either silent as to impairment or unable to reach a conclusion as to impairment.

On the other hand, I accord less weight to the opinion of Dr. Begley as it addresses total disability as his opinion fails to demonstrate an understanding of the exertional requirements of the claimant's coal mine employment. While Dr. Begley makes it clear that his diagnosis of total disability is based upon his observations during the physical examination and not necessarily the "normal" respiratory test results, his failure to demonstrate his knowledge of the exertional requirements of the claimant's job makes his opinion less probative.

When I consider the totality of evidence addressing the claimant's impairment level, I find that the record demonstrates total disability. The weight of the four significantly probative medical opinions, the qualifying arterial blood gas, and the qualifying pulmonary function test clearly outweighs the probativeness of the combined non-qualifying blood gases and pulmonary function tests. The claimant has carried his burden and demonstrated total disability.

Unless one of the presumptions at §§ 718.304, 718.305, or 717.306 is applicable, a miner with less than 15 years of coal mine employment, must establish that his or her total disability is due, at least in part, to pneumoconiosis. The Board has held that "[i]t is [the] claimant's burden pursuant to § 718.204 to establish total disability due to pneumoconiosis ... by a preponderance of the evidence." *Baumgartner v. Director, OWCP*, 9 B.L.R. 1-65, 1-66 (1986); *Gee v. Moore & Sons*, 9 B.L.R. 1-4, 1-6 (1986). The Sixth Circuit requires that total disability be "due at least in part" to pneumoconiosis. *Adams v. Director, OWCP*, 886 F.2d 818, 825 (6th Cir. 1989); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 566 (6th Cir. 1989); *Roberts v. Benefits Review Board*, 822 F.2d 636, 639 (6th Cir. 1987). The regulations require that the pneumoconiosis be a "substantially contributing cause" to the claimant's pneumoconiosis. 20 C.F.R. § 718.204(c) (Dec. 20, 2000).

The claimant has also carried this burden. Drs. Forehand and Baker attributed the claimant's total disability solely to his pneumoconiosis. Dr. Begley attributed the claimant's total
disability to his pneumoconiosis and provided no other factor causing his impairment level. Dr. Modd's opinion does not make a specific comment on the etiology of the claimant's

impairment, though his opinion could reasonably be read as attributing Claimant's impairment solely to pneumoconiosis. Thus, even disregarding Dr. Modd's opinion, my review of the evidence confirms that the claimant has demonstrated, by a preponderance of the evidence, the etiology of his impairment is pneumoconiosis.

Conclusion

In sum, I find that claimant has established the existence of pneumoconiosis arising from coal mine employment pursuant to Section 718.202(a)(4). I also find that claimant is totally disabled due to pneumoconiosis within the meaning of Section 718.204(b) and (c). Accordingly, Johnny I. Turner is entitled to benefits.

Attorney's Fee

Claimant's counsel has thirty days to submit an application for an attorney's fee. The application shall be prepared in strict accordance with 20 C.F.R. §§ 725.365 and 725.366. The application must be served on all parties, including the claimant, and proof of service must be filed with the application. The parties are allowed thirty days following service of the application to file objections to the fee application.

Date of Onset

The following order instructs that benefits become payable, beginning January 2001. This is the earliest date upon which benefits can become available in the instant claim. *Peabody Coal Co. v. Spese*, 117 F.3d 1001 (7th Cir. 1997)(en banc)(holding the earliest date of onset in a multiple claim under § 725.309 is the date on which that claim is filed and that the claim does not merge with earlier claims filed by the miner). As no evidence of record exists taken after January 2001, the date of onset of the claimant's total disability I am empowered to determine is, and can only be, January 2001.

ORDER

The Director is hereby ORDERED to pay the following:

1. To claimant, Johnny I. Turner, all benefits to which he is entitled under the Act, augmented by his reason of his one dependent, commencing January 2001;

2. To claimant, all medical and hospitalization benefits to which he is entitled, commencing January 2001; and

3. To the Secretary of Labor or to claimant, as appropriate, interest computed in accordance with the provisions of the Act or regulations.

A
JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington D.C. 20013-7601. This decision shall be final thirty days after the filing of this decision with the district director unless appeal proceedings are instituted. 20 C.F.R. § 725.479. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2605, Washington, D.C. 20210.